

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED],

Claimant

Reg No: 2010 30992

Issue No: 3020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 17, 2010

Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 17, 2010. The Claimant appeared and testified at the hearing. Ronald Phillips, ES and Avery Smith, FIM appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to a recoupment for an overissuance to Claimant's FAP benefits in the amount of \$411.00.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant was an active FAP recipient.
2. The Claimant received a notice of overissuance of Food Assistance Program "FAP" benefits covering the period 10/1/09 through 12/31/09.

3. The Department claimed an overissuance due to the Claimant's worker's compensation and RSDI income not being budgeted. Exhibit 1
4. The Claimant had been receiving FAP benefits since 2005 and had reported both the RSDI and Worker's Compensation income for quite some time
5. The Department could not explain why the income was not included in the Budget. In addition, the budget that was provided included no shelter expenses for mortgage/rent \$467 , heat or medical expense for \$96 in medicare premium.
6. The Department did not provide information to determine how the overissuance was determined and submitted no overissuance summary or FAP budgets to compare the benefits actually received versus the benefits which should have been received.
7. The department did not explain why the overissuance occurred.
8. The Department sought a \$411 overissuance recoupment from the Claimant's FAP benefits. The Department did not advise whether any deductions from the Claimant's current FAP benefits had begun.
9. The Department did not provide information or a budget to demonstrate the amount of FAP benefits the Claimant received during the months of overissuance.
10. On April 8, 2010, the Department received the Claimant's written request for a hearing protesting the proposed recoupment action.

CONCLUSIONS OF LAW

The Food Assistance Program, formerly known as the Food Stamp ("FS") program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department of Human Services ("DHS"), formally known as the Family Independence Agency, administers the

FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Table (“RFT”).

An over-issuance (“OI”) occurs when a client group receives more benefits than they are entitled to receive. BAM 700, p. 1. A claim is the resulting debt created by the overissuance of benefits (OI). Id. Recoupment is an action to identify and recover a benefit. Id. The Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. BAMs 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. BAM 705, p. 1. In general, Agency error OIs are not pursued if OI amount is under \$500.00 per program. BAM 705, pp. 1-3. The policy officially changed to allow recoupment under \$125.00 effective January 1, 2010.

In this case, the Department seeks recoupment of an over-issuance of FAP benefits in the amount of \$411 due to the Claimant’s income not being included in the Claimant’s FAP budget. The Budget submitted, in addition to not including the Claimant’s income, also did not include the claimant’s shelter expenses for mortgage /rent expenses in the amount of \$467 and heat and medical premium expenses in the amount of \$96.00. The Department has not established that the Claimant failed to report his income as he had been receiving the income and food stamps for a number of years previous to this matter. Further, the Department did not provide any evidence to establish the basis for the over-issuance amount.

The Department has not established the over-issuance and consequently its right to recoupment. Under BAM 720, the amount of the over-issuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. The Department did not present this information.

In the subject case, because the record does not substantiate the amount of the over-issuance, the Department is not entitled to recoup the FAP benefits the Claimant allegedly should not have received.

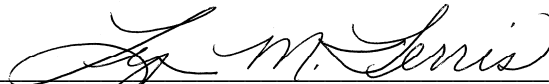
The undersigned has reviewed the file and the information submitted and cannot make a factual determination that there was a FAP over-issuance. Accordingly, the Department's over-issuance and recoupment action is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not substantiate, by the evidence it presented, that an over-issuance of FAP benefits occurred and thus is not entitled to a recoupment of the Claimant's FAP benefits.

It is, therefore, ORDERED that the OI and recoupment is REVERSED.

It is further ORDERED that the Department, if it previously has deducted any recoupment amount from the Claimant's FAP benefits as a result of the over-issuance in question, is ordered to supplement the Claimant for any monies that were already recouped by the Department, commencing the month recoupment began through the date of the hearing.



Lynn M. Ferris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/25/10

Date Mailed: 05/26/10

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LMF/dj

cc:

